IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

ORDER.

Uma Devi & anr. vs. The State of Raj. & anr.

S.B. Civil Writ Petition No. 69/2005 under Article 226 of the Constitution of India.

Date of Order: January 24, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Bharat Devasi for the petitioners.

Mr. N.M. Lodha, Addl.Advocate General along with
Mr. Shyam Toshniwal for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

A brief question is involved in this writ petition. According to the petitioner, to give effect to the 73rd constitutional amendment, the Panchayat Act was amended in the year 1994 making the provisions for reservation of the seats of the Chair Person for SC/ST and OBC categories. For this, Section 16 was enacted and the rules were framed

in the year 1994. Section 16 of the Rajasthan Panchayati Raj Act, 1994 provides reservation of the seats and their allotment by rotation to different Panchayats, Panchayat Samitis and Zila Parishads in the State in such manner as may be prescribed. As per rule 7 of the Rajasthan Panchayati Raj (Elections) Rules , 1994, reservation for these categories shall be allotted by draw of lots by excluding such reservation which has already been included in the earlier election till the cycle is completed. According to the petitioner, the first elections, after the Act of 1994, were held in the year 1995 and thereafter, it was held in the year 2000. In that process, seat of the Sarpanch, Gram Panchayat, Balunda was allotted for general category for above two elections. According to the learned counsel for the petitioner, the village Balunda has 20.33% of the voters from the Scheduled Caste categories and, therefore, the seat of village Balunda should have been reserved for members of Scheduled Caste category, whereas the respondents have reserved the seat of the village Balunda for woman candidate of general class.

During the course of argument, the learned counsel for the petitioner, after relying upon the circular dated 1.11.2004 (Annx.3) issued by the Panchayati Raj Department, submitted that the respondents reserved the seat of Bedkalla for the member of Scheduled Caste. According to the learned counsel for the petitioner, admittedly,

Bedkalla has less percentage of votes from the members of the scheduled caste than the village Balunda which is apparent from the even reply filed by the respondents. It is also submitted that the respondents have wrongly calculated number of seats to be allotted to the women candidates.

The learned Additional Advocate General, appearing on behalf of the respondents submitted reply to the writ petition and relied upon the instructions issued in this respect on 1.12.2004 which is clarificatory in nature and it provides that reservation of the seats for the women candidates shall not be less than 1/3rd. According to the learned counsel for the respondents, the wards and constituencies were identified which consists of population of the Scheduled Caste and they were arranged serially as required under Rule 7. The list is Annex.R/1. Seven seats were required to be kept reserved for the Sarpanch of seven Gram Panchayats as reserved for the SC in the Panchayat Samiti, Jaitaran. The reservation for women was also required to be made as per the draw of lots as provided under Rule 7(13) of the Rules of 1994. The constituencies which were declared reserved for women in first election, are required to be excluded by draw of lots for such reservation in succeeding election. In the first election (1995), 11 constituencies were kept reserved for the women for draw of lots. In

second general election also, 11 constituencies were kept reserved for women. At this time, all 11 constituencies which were reserved for the women in earlier election (1995), they were excluded for allotment of the seats for the women candidates. Now in the year 2005, remaining 11 constituencies are reserved for the women. In the year 1995, out of seven constituencies, three were kept for SC women as per draw of lots and in the election of 2000, constituencies Nos. 8 to 14 shown in Annx.R/1 were kept reserved for the SC category. Out of these seven constituencies, two were kept for women by draw of lots. In the present election, seven constituencies upto the village Balunda are kept reserved for the SC candidates. Since the seats for women candidate are required to be reserved, therefore, out of above seven, two seats, one of Ramawas Kala and Kekindara have been reserved by way of draw of lots. According to the respondents, 11 Panchayats were never kept reserved for the women seats and no constituency can be reserved for woman candidate twice, therefore, by following the instructions which are issued under the Rule 91A of the Rules of 1994, the seat of village Balunda has been reserved for the woman candidate. In view of the above, the respondents rightly declared the seat of the village Balunda reserved for the woman candidate of the general category.

I considered the submissions of the learned counsel for the parties

and perused Annx.R/1 as well as instructions issued on 1.12.2004. It is not in dispute that the list of all the villages falling in the area of the Panchayat Samiti in question was prepared containing number of persons of the Scheduled Caste in the village. So far as elections of 1995 and 2000 are concerned, they were conducted by following the rules for reservation of the constituencies. There is no dispute that lot is required to be of seven constituencies. It is also not in dispute that in the last lot of the constituencies, two, i.e. Ramawas Kalla and Kekindara have been declared reserved for women candidates in the earlier election. No constituency can be reserved for woman candidate twice till the list is exhausted. In view of the above, I do not find any illegality in the procedure adopted by the respondents for reserving the seat and allotting the seat of the village Balunda to the candidate of woman of general category.

In the result, there is no force in the writ petition filed by the petitioner and hence the same is hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.